

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 887 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KOLI CHATUR ALIAS CHAKO NARANBHAI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2001

ORAL JUDGEMENT

1. Heard learned advocate Ms. K.U. Mishra for the petitioner and learned AGP Mr. N.D. Gohil on behalf of the respondents - State of Gujarat. In present petition, the order of detention has been passed by the District

Magistrate, District Bhavnagar dated 4th September, 2000 under Section 3(2) of the Prevention of Anti Social Activities Act, 1985 and petitioner had been detained in Special Jail, Porbandar as Class II detenu. The present petition has been filed on 22.1.2001 and Rule has been issued by this Court on 7.2.2001 and thereafter, the matter has been adjourned time to time and affidavit-in-reply has been filed by the respondent-Detaining Authority on 3rd April, 2001.

2. Learned advocate Ms. K.U. Mishra has raised contention in para 13 that the Detaining Authority recorded four statements of witnesses and verified by the Detaining Authority on 20th August, 2000, wherein, one word "verified" has been mentioned, which is not proper and genuine verification by the Detaining Authority and therefore, the detention order is illegal and it requires to be set aside. Learned advocate Ms. K.U. Mishra has referred page Nos. 65 to 71, wherein, the total four statements have been recorded by the concerned police authority at Palitana and at left side column of all the statements, the Detaining Authority has mentioned as under :-

" Verified the contents. District Magistrate,
Bhavnagar on 30th August, 2000."

These all four statements similarly recorded by the concerned authority and verified the contents by the District Magistrate, Bhavnagar on 30th August, 2000 and therefore, the learned advocate Ms. K.U. Mishra has submitted that one ground is enough to vitiate the order of detention. Ms. K.U. Mishra has also submitted that against the ground, which has been raised by the present petitioner in para 13 of the petition, the respondent Detaining Authority has not given any reply in the affidavit-in-reply filed by the Detaining Authority, so this contention of the petitioner raised in para 13 of the petition is remained unreplyed and not controverted by the respondent - Detaining Authority.

3. Learned advocate Ms. K.U. Mishra has relied upon the decision of this Court in case of JAKIRBHAI RAHIMBHAI NAGORI VS. DISTRICT MAGISTRATE, MEHSANA & OTHERS, reported in 1996 (1) G.L.H. 300. This court has observed that however, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material

before him to come to that subjective satisfaction.

4. Therefore, considering the observations as referred above made by the Division Bench of this Court in Special Criminal Application No. 1812 of 1993 dated 12th September, 1994 in case of KOLI ASHWIN VS. STATE OF GUJARAT. Considering the present facts of the case in the aforesaid back ground of the statements of each of the witnesses, when I turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the District Magistrate, Bhavnagar on 30th August, 2000, apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material.

About what has been verified, what were the instructions and to what extent the verifying authority himself was satisfied about the apprehension expressed, there is nothing either in the grounds of detention along with its compilation or in the contemporaneous record from the office of the detaining authority.

5. It is noted that when the detention order has been challenged by the petitioner and detenu has assailed the genuineness of the claim of privilege made by the detaining authority under Section 9(2) of the Act, vis-a-vis the statements of witnesses. In such cases, in fact, the witnesses in their statements have said that their addresses, names, place of business, etc. should not be disclosed to the detenu as they were apprehending danger to their life and property. Such apprehension or fear expressed by the witnesses in their statements was before the authority, who has recorded the statements. The detaining authority has not recorded the statements. The detaining authority itself was required to be subjectively satisfied that the claim of privilege which it was seeking to make was justified. Therefore, it is the duty of the detaining authority to satisfy by way of subjective satisfaction as to whether the fear or apprehension expressed by the witnesses was genuine or not. Unfortunately, below every statements, the District Magistrate, Bhavnagar has written one word namely "verified the contents" and based on such instructions made by the detaining authority has claimed privilege. Therefore, according to my opinion, such an exercise is merely a futile exercise and there is no genuineness and there is no material before the Detaining Authority to claim privilege under Section 9(2) of the PASA Act.

6. Therefore, according to my opinion, after considering the decision of Division Bench of this Court as well as the decision as referred above and relied upon of this Court reported in 1996(1) GLH 300, the position of law is well established and claim of privilege made by the Detaining Authority under Section 9(2) of the Act was not genuine and to the aforesaid extent the detenu was denied the opportunity of making effective representation by making and supplying to him the other details of the statements of witnesses. Therefore, the continued detention of the detenu is therefore, null and void and in the result, the petition succeeds.

7. For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 4th September, 2000 is vitiated and resulted to quash and set aside. The detenu, Koli Chatur @ Chako Naranbhai, who has been detained at Special Jail, Porbandar be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

Date : 7.5.2001 (H.K.Rathod, J.)

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